

ADMINISTRATIVE PANEL DECISION

Telefonaktiebolaget LM Ericsson v. 张伟 (zhang wei)
Case No. D2023-0112

1. The Parties

The Complainant is Telefonaktiebolaget LM Ericsson, Sweden, represented by CSC Digital Brand Services Group AB, Sweden.

The Respondent is 张伟 (zhang wei), China.

2. The Domain Name and Registrar

The disputed domain name <ericsson.com> is registered with Alibaba Cloud Computing Ltd. d/b/a HiChina (www.net.cn) (the "Registrar").

3. Procedural History

The Complaint was filed in English with the WIPO Arbitration and Mediation Center (the "Center") on January 10, 2023. On January 10, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On January 11, 2023, the Registrar transmitted by email to the Center its verification response disclosing registrant and contact information for the disputed domain name which differed from the named Respondent and contact information in the Complaint. The Center sent an email communication to the Complainant on January 11, 2023 providing the registrant and contact information disclosed by the Registrar, and inviting the Complainant to submit an amendment to the Complaint. The Complainant filed an amended Complaint in English on January 13, 2023.

On January 11, 2023, the Center transmitted an email communication to the Parties in English and Chinese regarding the language of the proceeding. On January 13, 2023, the Complainant submitted a request that English be the language of the proceeding. The Respondent did not comment on the language of the proceeding.

The Center verified that the Complaint together with the amended Complaint satisfied the formal requirements of the Uniform Domain Name Dispute Resolution Policy (the "Policy" or "UDRP"), the Rules for Uniform Domain Name Dispute Resolution Policy (the "Rules"), and the WIPO Supplemental Rules for Uniform Domain Name Dispute Resolution Policy (the "Supplemental Rules").

In accordance with the Rules, paragraphs 2 and 4, the Center formally notified the Respondent in English and Chinese of the Complaint, and the proceedings commenced on January 17, 2023. In accordance with the Rules, paragraph 5, the due date for Response was February 6, 2023. The Respondent did not submit any response. Accordingly, the Center notified the Respondent's default on February 7, 2023.

The Center appointed Jonathan Agmon as the sole panelist in this matter on February 23, 2023. The Panel finds that it was properly constituted. The Panel has submitted the Statement of Acceptance and Declaration of Impartiality and Independence, as required by the Center to ensure compliance with the Rules, paragraph 7.

4. Factual Background

The Complainant is a leading provider of telecommunications technology and services around the world. It offers services, software and infrastructure in information and communications technology for telecommunications operators, along with traditional telecommunications and Internet Protocol. The Complainant is also a leader in the development of smartphone technology as well as in research on 3G and 4G networks.

The Complainant was founded in 1876 and in the third quarter of 2020, achieved net sales of SEK 57.5 billion and is listed on the Nasdaq Stockholm and on NASDAQ in New York. It currently employs 99,000 employees worldwide across six continents.

The Complainant is the owner of the ERICSSON trademark, including but not limited to:

- European Union Trade Mark registration No. 004822219 for ERICSSON registered on December 7, 2006.
- United States Trademark registration No. 2665187 for ERICSSON registered on December 24, 2002.
- Chinese Trademark registration No. 3124284 for ERICSSON registered June 28, 2003.
- International registration No. 1024858 for  registered on October 7, 2009.

The Complainant also states that it owns the registered domain name <ericsson.com> registered since July 25, 1989.

The disputed domain name, <ericsson.com> was registered on May 28, 2022. It resolved to an active website which displayed Pay-Per-Click ("PPC") links to third party websites.

5. Parties' Contentions

A. Complainant

The Complainant argues that the disputed domain name is confusingly similar to its ERICSSON mark as the disputed domain name which wholly incorporates the ERICSSON mark in its entirety with the addition of a single letters, 's' with a generic Top-Level Domain ("gTLD") ".com", is insufficient to avoid confusing similarity.

The Complainant also argues that the Respondent has no rights or legitimate interests in respect of the disputed domain name as it has not licensed or permitted the Respondent to use any of its trademarks or register the disputed domain name.

The Complainant further argues that the disputed domain name was registered and is being used in bad faith to intentionally attract, for commercial gain, Internet users to the Respondent's website, by creating a

likelihood of confusion with the Complainant's trademark as to the source, sponsorship, affiliation, or endorsement of the Respondent's website and of products and services represented on the Respondent's website.

B. Respondent

The Respondent did not reply to the Complainant's contentions.

6. Discussion and Findings

6.1 Language of the Proceeding

Paragraph 11 of the Rules provides that:

"(a) Unless otherwise agreed by the Parties, or specified otherwise in the Registration Agreement, the language of the administrative proceeding shall be the language of the Registration Agreement, subject to the authority of the Panel to determine otherwise, having regard to the circumstances of the administrative proceeding."

The language of the Registration Agreement for the disputed domain name is Chinese.

The Complainant requested that the language of the proceeding be English for the following reasons:

- i. the Complainant and its representative are unable to communicate in the Chinese language;
- ii. translating the Complaint into Chinese would cause an undue burden on the Complainant and unnecessarily delay the proceeding; and
- iii. the disputed domain name and the website to which the disputed domain name resolves are in the English language.
- iv. The Respondent did not comment on the language of the proceeding.

The Panel cites the following with approval: "Thus, the general rule is that the parties may agree on the language of the administrative proceeding. In the absence of this agreement, the language of the Registration Agreement shall dictate the language of the proceeding. However, the Panel has the discretion to decide otherwise having regard to the circumstances of the case. The Panel's discretion must be exercised judicially in the spirit of fairness and justice to both parties taking into consideration matters such as command of the language, time, and costs. It is important that the language finally decided by the Panel for the proceeding is not prejudicial to either one of the parties in his or her abilities to articulate the arguments for the case." (See *Groupe Auchan v. xmxzl*, WIPO Case No. [DCC2006-0004](#)).

Having considered the above factors, the Panel determines that English should be the language of the proceeding. The Panel notes that the disputed domain name resolves to a website in English, that the Respondent has not participated in this proceeding, and that all the Center's communications with the Parties have been sent in English and Chinese. The Panel also needs to ensure the proceeding is conducted in a timely and cost-effective manner. In the absence of an objection by the Respondent, the Panel does not find it procedurally efficient to have the Complainant translate the Complaint into Chinese.

A. Identical or Confusingly Similar

Paragraph 4(a)(i) of the Policy requires the Complainant to show that the disputed domain name is identical or confusingly similar to a trademark or service mark in which the Complainant has rights.

A registered trademark provides a clear indication that the rights in the mark shown on the trademark certificate belong to its respective owner. The Complainant has provided evidence that it owns the ERICSSON mark.

The disputed domain name comprises the Complainant's ERICSSON mark in its entirety with the addition of the additional letter "s" in the disputed domain name <ericsson.com>.

It is well established that where the trademark is recognizable within the disputed domain name, the addition of other terms (whether descriptive, geographical, pejorative, meaningless, or otherwise) would not prevent a finding of confusing similarity under the first element. See WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)"), section 1.8. The Complainant's ERICSSON mark is clearly recognizable in the disputed domain name.

It is also well established that a domain name which consists of a common, obvious, or intentional misspelling of a trademark is considered by panels to be confusingly similar to the relevant mark for purposes of the first element ([WIPO Overview 3.0](#), section 1.9). The disputed domain name consists of an obvious and intentional misspelling of the Complainant's ERICSSON mark and is considered confusing similar.

Further, it is well established that the adding of the gTLD ".com", as a standard registration requirement, is disregarded under the first element confusing similarity test ([WIPO Overview 3.0](#), section 1.11.1).

Therefore, the Panel finds that the disputed domain name is confusingly similar to a trademark in which the Complainant has rights and the element under paragraph 4(a)(i) of the Policy is satisfied.

B. Rights or Legitimate Interests

Once the complainant establishes a *prima facie* case that the respondent lacks rights or legitimate interests in the domain name, the burden of production shifts to the respondent to show that it has rights or legitimate interests in respect to the domain name ([WIPO Overview 3.0](#), section 2.1).

The Complainant provided evidence that it owned the ERICSSON trademark registrations long before the date that the disputed domain name was registered, and that it is not affiliated with nor has it licensed or otherwise permitted the Respondent to use the Complainant's trademark (see *LEGO Juris A/S v. DomainPark Ltd, David Smith, Above.com Domain Privacy, Transure Enterprise Ltd, Host master*, WIPO Case No. [D2010-0138](#)).

The Complainant also provided evidence that the Respondent is not commonly known by the disputed domain name (see [WIPO Overview 3.0](#), section 2.3).

Although the Respondent did not submit a Response in the present case and did not provide any explanation or evidence to show rights or legitimate interests in the disputed domain name, the Panel must nevertheless assess the evidence provided by the Complainant to determine whether the Complainant has sufficiently demonstrated that the Respondent does not possess any rights or legitimate interests in the disputed domain name. See *The Knot, Inc. v. In Knot We Trust LTD, supra*; *Bootie Brewing Company v. Deanna D. Ward and Grabebootie Inc.*, WIPO Case No. [D2003-0185](#).

Panels have found that the use of a domain name to host a parked page comprising "Pay-Per-Click" ("PPC") links does not represent a *bona fide* offering where such links compete with or capitalize on the reputation and goodwill of the complainant's mark or otherwise mislead Internet users.

The Complainant's evidence comprises various screenshots of a website showing PPC links which appear to be non-competing to the Complainant. However, given the notoriety of the Complainant's trademark, and the evidence before the panel, there is no doubt that the Respondent was using the disputed domain name to unfairly capitalize on the Complainant's trademark (see [WIPO Overview 3.0](#), section 2.2; see also

Express Scripts, Inc. v. Windgather Investments Ltd./ Mr. Cartwright, WIPO Case No. [D2007-0267](#), *Paris Hilton v. Deepak Kumar*, WIPO Case No. [D2010-1364](#)).

The Panel is therefore of the view that the Respondent has no rights or legitimate interests in respect of the disputed domain name and accordingly, paragraph 4(a)(ii) of the Policy is satisfied.

C. Registered and Used in Bad Faith

The complainant must show that the respondent registered and is using the domain name in bad faith (Policy, paragraph 4(a)(iii)). Paragraph 4(b) of the Policy provides circumstances that may evidence bad faith under paragraph 4(a)(iii) of the Policy.

The Complainant has submitted evidence that the Respondent registered the disputed domain name long after the Complainant registered its ERICSSON trademark. Given that the Complainant's trademark has been registered for a long time, it is highly unlikely that the Respondent did not know of the Complainant and its ERICSSON mark prior to the registration of the disputed domain name. The disputed domain name incorporates the Complainant's ERICSSON mark in its entirety with the additional letter "s".

The Panel also noted the presence of a subdomain in the disputed domain name's MX records, which could potentially be used for phishing purposes. The presence of MX records is indicative of bad faith because it "give[s] rise to the strong possibility that Respondent intended or intends to use the disputed domain name to send emails as part of a fraudulent phishing scheme". (See *Altria Group, Inc. and Altria Group Distribution Company v. Emerson Terry*, WIPO Case No. [D2021-0045](#)).

The Complainant has also submitted evidence that the disputed domain name resolves to a parking page with commercial PPC links. The PPC website prominently presents the words "ERICSSON.COM" at the top of the page, which is likely to create a likelihood of confusion with the Complainant's mark as to the source, affiliation or endorsement of the website. Given the Complainant's notoriety, the Panel finds that the Respondent has attempted to use the Complainant's trademark to attract Internet users to his own website to monetize on the Complainant's goodwill in the ERICSSON trade mark, which constitutes bad faith registration (see *StudioCanal v Registration Private, Domains by Proxy, LLC/Sudjam Admin, Sudjam Admin, Sudjam LLC*, WIPO Case No. [D2018-0497](#), see also *Express Scripts, Inc. v. Windgather Investments Ltd*, WIPO Case No. [D2007-0267](#)).

The Complainant has also provided evidence of the Respondent's history of cybersquatting, which previous UDRP panels have found to be evidence of bad faith registration and use of the disputed domain name. (See *BHP Billiton Innovation Pty Ltd v. Cameron David Jackson / PrivacyDotLink Customer 2415391 / PrivacyDotLink Customer 2463008*, (WIPO Case No. [D2016-2020](#)).

It is also the Complainant's evidence that, given the notoriety of the Complainant's ERICSSON mark, the Respondent could not have registered the disputed domain name without prior knowledge of the Complainant's marks. This is another indication of bad faith on the part of the Respondent (see *Boursorama SA v. Estrade Nicolas*, WIPO Case No. [D2017-1463](#)).

The Respondent did not submit a Response in this proceeding which is a further indication of the Respondent's bad faith, which was considered by the Panel.

Given the circumstances of this case, the Panel finds an attempt by the Respondent to confuse and/or mislead Internet users seeking or expecting the Complainant's website. Previous UDRP panels have ruled that in such circumstances "a likelihood of confusion is presumed, and such confusion will inevitably result in the diversion of Internet traffic from the Complainant's site to the Respondent's site" (see *Edmunds.com, Inc v. Triple E Holdings Limited*, WIPO Case No. [D2006-1095](#)).

Based on the evidence presented to the Panel, including the confusing similarity between the disputed domain name and the Complainant's mark, the fact that the disputed domain name is used to redirect Internet users to a website with PPC links capitalizing on the Complainant's goodwill in its trademark, the fact that no Response was submitted by the Respondent in response to the Complaint, the Respondent's history of cybersquatting, the Panel draws the inference that the disputed domain name was registered and is being used in bad faith.

7. Decision

For the foregoing reasons, in accordance with paragraphs 4(i) of the Policy and 15 of the Rules, the Panel orders that the disputed domain name <ericsson.com> be transferred to the Complainant.

/Jonathan Agmon/

Jonathan Agmon

Sole Panelist

Date: March 9, 2023